

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SAINT-GOBAIN CORPORATION,

Plaintiff /Counterclaim defendant,

v

GEMTRON CORPORATION,

Defendant/Counterclaim plaintiff.

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Case No. 1:04-cv-387

Hon. Wendell A. Miles

ORDER ON GEMTRON’S MOTIONS IN LIMINE TO EXCLUDE EVIDENCE  
OF DEFENSES OF INVALIDITY AND NON-INFRINGEMENT

Presently before the court are defendant/counterclaim plaintiff Gemtron’s Motions in Limine to Exclude Evidence of the Defenses of Invalidity and Non-Infringement (docket nos. 285, 287). Plaintiff/counterclaim defendant Saint-Gobain has opposed both motions.

**Discussion**

In its motion, Gemtron argues that Saint-Gobain has waived certain defenses directed to one of the patents in suit (the ‘673 patent), and that other defenses directed to both patents in suit are moot given the court’s April 17, 2006 ruling on motions for summary judgment or “without support.”

The court is not persuaded that Saint-Gobain has waived any non-infringement defense timely asserted in the case. Moreover, the court concludes that Gemtron’s arguments regarding waiver and lack of evidentiary support are presented too late in the case for the court to

thoroughly explore in advance of trial whether certain defenses timely raised should be removed from consideration at the trial. Such arguments should have been raised in a dispositive motion filed earlier in the case. At this stage, therefore, the court is inclined to leave these issues for consideration at trial.

The court agrees that certain of Saint-Gobain's defenses to infringement are contradicted by the court's April 16, 2006 ruling. Therefore, Saint-Gobain will be precluded from introducing evidence which contradicts that ruling. However, the court's ruling was limited to only three shelves and to certain claims of only one patent (the '573 patent). The court has made no ruling regarding any of the 18 shelves which have recently been added to the case.

The court agrees that Saint-Gobain should be precluded from presenting evidence relating to any defenses not disclosed in the Chart as amended per the court's April 25, 2006 ruling on Gemtron's motion for leave to amend. Because the court has now denied Saint-Gobain's own motion for leave to amend the Chart, the Chart, as amended per the April 25, 2006 ruling, controls. Gemtron's motions are therefore **GRANTED IN PART** and **DENIED IN PART** for the reasons stated herein.

So ordered this 9th day of May, 2006.

/s/ Wendell A. Miles  
Wendell A. Miles  
Senior U.S. District Judge